श्री राम अवधेश सिंह : एक मिनट; मेरी बात .....(व्यवधान).....आप हमको जो भी दंड दीजिए हमको स्वीकार है (व्यवधान)

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): I cannot allow you ...*(Interruptions)* आपको हाउस की..... (व्यवधान) आप बैठ जाइये Otherwise, every Member will raise some thing or the other and so, I cannot allow you ... *(Interruptions)*...

SHRI HANS RAJ BHARDWAJ: Sir, I beg to move that ... *(Interruptions)*...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Just a minute, Mr. Bhardwaj.

Mr. Ram Awadesh Singh, please sit down... *(Interruptions)*... Please sit down. Otherwise, I will name you... *(Interruptions)*...

श्री मोहम्मद खलीलुर रहमान (आंध्र प्रदेश) : श्री सत्यनारायण रेड्डी जी ने जो स्पेशल मेंशन किया है मैं उससे अपने को असोसियेट करता हूं। यह वक्त की जरूरत है कि हिन्दुस्तानी तरीके, आयुर्वेदिक और यूनानी इनमें हिन्दुस्तानी तरीके से इलाज होता है और इसके बारे में आंध्र प्रदेश सरकार का जो प्रपोजल सेंट्रल गवर्नमेंट के पास है उसको फौरन मंजूर किया जाय।

[شری محمد خلیل الرحمان - آندھراپردیش] : شری ستیانارائن ریڈی جی نے جو اسپیشل مینشن کیا ہے - میں اس سے اپنے کو ایسوسیٹ کرتا ہوں - یہ وقت کی ضرورت ہے کہ ہندوستانی طریقے آیورویدک اور یونانی - ان میں ہندوستانی طریقے سے علاج ہوتا ہے اور اسکے بارے میں آندھرا پردیش سرکار جو پروپوزل سنٹرل گورنمینٹ کے پاس ہے اسکو فوراً منظور کیا جائے -]

INDIAN CONTRACT (AMENDMENT) BILL 1988.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI HANS RAJ BHARDWAJ): Sir, I beg to move:

> "That the Bill further to amend the Indian Contract Act, 1872, be taken into consideration."

Sir, section 74 of the Indian Contract Act deals with compensation for the breach of the contract where penalty is stipulated for. The section provides that where a sum is named in the contract as the amount to be paid in case of breach of contract, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Where the contract contains any other stipulation by way of penalty, the party complaining of the breach of contract is entitled to receive the penalty stipulated for. In other words, the section provides for a measure of damages in two classes of cases: one, where the contract names a sum to be paid in case of breach, and two, where the contract contains any other stipulation by way of penalty. It is well settled by rulings of the courts that in the latter case penalty provisions cannot be enforced for recovery of damages and that even where stipulated damages are specified in a contract which are not penal, the court will only award damages not exceeding the amount stipulated in the contract. It has come to the notice of Government that often for securing the Govrenment contracts, the parties seeking contracts indulge in paying of amount in terms of fee, commission, perquisites or other consideration to persions, in or outside the Government, over and above the price for goods supplied or fees for services rendered. It is considered necessary that to stop such practice every Government contract, for tht supply of any goods or for rendering of any service, should include an undertaking from the person seeking such contract

[ ] Transliteration in Arabic Script

[Shri Hans Raj Bhardwaj]

that he shall not make payment of any fee, commission, perquisites or any other consideration to any person, whether in Government or otherwise, for securing the contract. As already stated, due to the interpretation given by the Courts to the provisions of section 74, the penalty provisions in the contract for recovery of damages may not be useful for this purpose as the Court may award only such damages not exceeding the amounts stipulated in the contract for the breach of contract only.

It is, therefore, proposed to amend section 74 of the Indian Contract Act, 1872, and insert a proviso thereunder to enable the Government by appropriate covenant in a contract to levy, as and by way of damages, double the amount given, over and above the payment of the price of the goods supplied or fees for the services rendered, by the contractor if such fee, commission, perquisites or consideration is paid by him in breach of such a covenant. It is hoped that this will help in putting a stop to such a practice and will enable the Government to recover by way of penalty any gratification in the form of fee, commission, perquisites given by the contractors for securing the contracts.

The question was proposed.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): The time given by the Business Advisory Committee for this Bill is one hour. I would request the hon. Members to restrict themselves to 5 to 7 minutes.

SHRI KAMAL MORARKA (Rajasthan): Sir, the amendment before this House to the Indian Contract Act, 1872, is a very small amendment. Now, as I understand, the Government in its contracts to the suppliers, the D.G.S.&D especially, have been putting a clause recently, maybe from 1986 when this Bill was presented, that there will be no middlemen, there should be no commission agent and there should be no representative firm to represent the manufacturers. In order that that clause can be enforced if somebody breaches it, there was no provision in the Contract Act. Therefore, this Bill had to be brought forward.

Before coming to the specific provisions of this Bill, I want to mention two things. Firstly, there are certain Acts in India which have stood the test of time. One of them is the Indian Contract Act of 1872. Then there are the Indian Penal Code, the Criminal Procedure Code and the Sale of Goods Act. Sir, we have found from experience that these Acts were very well drafted and they have taken care of even the changing situation over the last 100 years. The less we tinker with these Acts, the better it will be for enforcing the law. On the other hand, we see that a freshly brought up legislation like the Monopolies and Restrictive Trade Practices Act which was passed only in 1970, has been amended about one dozen times and another amendment is coming in this House this week or next week. Similarly, the Companies Act, in 1956, we brought a new Act to replace the 1913 Act. Now the 1956 Act has been amended almost every year. So, compared to these new Acts, the drafting of the old Act and the basic scheme of the old Act is much better. Before we amend them, I think a lot of work should go in and only if the amendment is absolutely necessary, we should legislate. This Bill which we are just going to pass is the prime example of legislation for the sake of legislation. I will shortly show you that this legislation will not serve the purpose for which we are bringing it. Fully knowing that this is not going to achieve the purpose, we are still going to pass it. My first suggestion to the Government is: Let us amend the law only when it is necessary. It is not written in any book that in every Parliament session we must amend so many laws. There is no such law.

Now I come to the basic scheme of things as to whether business can be done only with middlemen or whether we can eliminate middlemen. Sir, from the

70s onwards it has been the declared policy of the Government of the then Congress Party—our Party also subscribed to the view—that as far as possible, middlemen should be eliminated.

The STC and the MMTC had come into being with the express purpose that there should be State trading in commodities, in things which the country imports on a large scale, in things which the country exports, so that the country gets the best deal. But, Sir, in the last 18 years' experience what have we seen? Two things. No. 1 the middlemen have not been eliminated. In every deal there are middlemen. No. 2, which is worse, the STC and the MMTC have themselves become middlemen. So instead of one middleman we have two middlemen now. The cost of the economy has gone up, the cost of exports has gone up and the cost of imports has gone up. So we have to see whether the Government should re-examine whether such a clause in Government contracts is at all practicable. Suppose you put a condition that there will be no middleman I do not want to discuss specific contracts. But we have seen lately that in spite of a clear stipulation that there will be no middlemen there are middlemen, whom we cannot find out where they are, who they are. All that has happened in spite of the stipulation that there will be no middlemen. So let us examine the question afresh. And I would like to tell the Minister that even after this Bill becomes an Act there is nothing to prevent the Government to re-examine whether such a clause should be put at all. On the other hand, I think the time has come when in every contract there should be a clause that the middlemen should be declared—who is the middleman, how much commission he is going to get—and we should ensure that on whatever commission he gets he pays tax. Let the things be above board. If we can eliminate middlemen, that is Utopian. But if we cannot eliminate them let them be on the front rather than behind the curtain. Otherwise what will happen is that we will have middlemen, the cost of the production will be high and there will be tax evasion or flight of capital from the country which is totally undesirable.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): To the extent they declare the commission there will not be evasion. But there is also underground commission.

SHRI KAMAL MORARKA: What is the point in making a clause which we know we cannot implement?

Next, Sir, assuming this clause is there and this Act is there, what about the implementation? I submit, Sir, that most of the activity, economic activity, that a citizen undergoes is one form of contract or the other. Either it is buyer-seller or it is landlord-tenant—it is also a contract —or it is a telephone company or subscriber—it is also a contract. Whether it is the LIC or a client, it is also a contract. And, Sir, what do we find? The breach of contract in more cases than one is on the part of Government authorities. If the LIC is not paying premium to the widow, how will that this amendment help the widow? It cannot. If the landlord is through out the poor tenant, how is this going to help him? What I am trying to say is that this amendment touches a very, very small fraction of people and people who have all the means to break what we are passing. All that we are doing is that what is commonly known we are putting behind the curtain, fully knowing that there will be middlemen in it.

Not a day passes today when there is not a new scandal. Everyday we are reading in the newspapers about a new scandal. They are not scandals. They are only middlemen operating in spite of the clause that there will be no middlemen. In every contract there is a middleman who suddenly surfaces. And when he surfaces then all sorts of charges come that he has been a spy, that he has been indulging in espionage, he is stealing a document; and nobody knows. Why should a business be converted into a mystery is itself a mystery to me.

SHRI DIPEN GHOSH (West Bengal): There is genuine espionage also!

SHRI KAMAL MORARKA: Now we have come to know that it can be genuine espionage also. Let us know. If there is something which is unavoidable, let us have it in the open. The Government itself is giving an excuse that on paper there can't be a middleman. Behind the curtain everybody knows who is the middleman. You can go to any corridor in Delhi, to any cocktail party in Delhi; everybody knows who has got which contact. So, I am against that sort of thing. Let us have an open Government Let us also have some sort of Glasnost here.

Finally, a very good point was agitated by my colleague, Dr. Bapu Kaldate, about the accumulation of cases in courts. The High Courts have got something like 15.88 lakh cases pending all over the country. Lower courts have 1.2 crores cases in the country. Sixty-five High Court Judges' posts are vacant. Now, Sir, I submit that while it is true that a number of judges' vacancies are to be filled up, it is also true that a simple and direct legislation can reduce litigation. It is not our job to create work for courts. What is happening today is that the new legislation is so complicated that it gives rise to litigation. Now, a lot of things which a Joint Secretary can sort out are being dragged to the law courts. Now this legislation which you are about to pass is one more example. There will be a series of litigations. The commission agents will say, we are not agents, we are representatives, we are this and we are that. Sir, increasing the workload of the judiciary is not in the interests of healthy functioning of this democracy. I submit that apart from the decentralisation process which the Government is committed to, the smaller cases can be decided at the district level or the village level. All the cases need not come to the Supreme Court or the High Courts. And this cannot be done unless the Legislature actively cooperates. Sir, with all sense of responsibility, I wish to say that we as law-makers, unfortunately, are over-stretching ourselves. We are creating laws which we ourselves cannot follow, we are passing laws which we know everybody will break, and in the process we are increasing the workload of the judiciary. Judiciary is not able to cope up with the work. People are losing faith not only in us but also in the judicial system. This is not at all a healthy trend. Sir, I submit that any legislation that comes, let it be screened, let it go to a Select Committee, let it take its own time. There is no hurry to rush through the legislation.

With these words, Sir, I wish that at least for the future, the Law Minister will keep in mind what best can be done to reduce unnecessary paper work.

Thank you, Sir.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Shri Narayanasamy.

SHRI SUBRAMANIAN SWAMY (Uttar Pradesh): Sir, will he talk about Tamil Nadu elections?

SHRI V. NARAYANASAMY (Pondicherry): If you don't contest, I will not talk.

SHRI DIPEN GHOSH: Is he contesting?

SHRI V. NARAYANASAMY: You ask him. He is sitting by your side.

D. YELAMANCHILI SIVAJI (Andhra Pradesh): Are you going to contest in Tamil Nadu?

SHRI V. NARAYANASAMY: Mr. Vice-Chairman, Sir, thank you for giving me this opportunity to talk on this small but much-needed legislation, the Indian Contract (Amendment) Bill, 1988. Sir, I heard the hon. Member from the other side who was telling that the legislations which have been drafted recently are only in the statute books, and he had all appreciation for those legislations which came into being during the British regime. Sir, I take strong exception to it because the social legislations which have been

drafted now are being enforced very well and the benefits are going to the people which has been lost sight of by my hon. friend.

Sir, the hon. Member was telling about the MMTC and the STC and various other organisations. Sir, now the simple theory is whether we should have the middlemen in any Government contracts or not. Sir, the Government is entering into carious agreements for services, for carrying out construction work and also for supply of materials. What is practically happening nowadays whether in the States or in the Centre or in the States ruled by the Opposition parties, is that the middlemen are thriving very well. They have a liaison with the officials. I am telling about corruption by officials. That is the main reason for these middlemen to thrive. Sir, what the officials do is that they get in touch with the middlemen. In all the offices of the Central Government and the State Governments, those people actually run the show. The agreements or the contracts are entered into by the Governmen with the parties through the officials only These officials are in the hands of the middlemen. They get money for that, and these middlemen also get money out of that. The material which is worth Rs 1,000 is supplied for Rs. 2,000. The ultimate loser is the Government. Inferior quality of goods are supplied and there is no method to check it. Sir, see the corruption cases Newspapers everyday report unearthing of wealth held by the officials disproportionate to their income. Sir recently two months back, crores and crores worth of goods, that too foreign goods and also lands and flats owned by officials were unearthed by the raids conducted by the CBI and also by the Enforcement machinery. How have these officials got so much money? This is only through the means of doing a favour for the middlemen and also the contractor. Sir, I specifically, give an example of the PWD in the States. The PWD engineers and other officials who are working there, they have emassed lakhs and lakhs of rupees. Their income is Rs. 2500 or Rs. 3000 only but their saving runs into lakhs and lakhs of rupees. Wherefrom have they got this money? Now, Sir, this particular legislation is required for that purpose. The Minister has brought forward this particular legislation for the purpose of curbing middlemen and not only for the ...

SHRI DIPEN GHOSH: What about curbing political corruption?

SHRI V. NARAYANASAMY: ... purpose of curbing it but also for controlling it. I can see the reason behind it. Because it is not only a penal clause it is a dangerous clause also when it is proved that middlemen were employed. When it is proved that commission was paid, the Government has a right to recover double the amount. When that particular clause is there at least it will create a fear in the mind of the contractor who enters into an agreement with the Government that in this particular transaction the middleman should be avoided. Sir, I have my genuine doubt. In the contracts which have been entered into when it is proved that this middleman was employed in that, the matter goes to court. Then the court has to decide whether the middleman was there or not. Even though the Government unilaterally cancels the contract and proposes to recover the amount from him, the contractor goes to court. I would like to urge upon the Minister to set right that particular provision because if you allow him to go to court it will take six to seven years to decide the matter. Until such time the Government cannot execute that particular contract and the Government cannot get the supply of the material and the Government cannot get the services to be rendered by that contractor. Therefore, I would like to know whether anything is to be done for not enabling the person, the contractor, to go to court, because this particular clause which has been made, should be enforced strictly, or whether the Minister has got any other enforcing machinery at its disposal for the purpose of enforcing this particular provision. (*Interruptions*). Sir, I am only hearing a running commentary.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): No, I am hearing you only.

SHRI DIPEN GHOSH: When the contractor goes to court, he will say it was not a commission but it was only winding up charges. What about that?

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You go on speaking whatever you want to say.

SHRI V. NARAYANASAMY: Sir, so far as the Contract Act is concerned, it came into being about a century back, or more precisely more than 90 odd years back. That Act is still applicable today, whether it is for the purpose of entering into any transaction or agency system or guarantee. For all these things that Act is still applicable in our country. Sir, we have amended several Acts But in this particular Act I see the amendment only now. For the past two to three years only one amendment has come, this particular amendment because the Government could not enforce that particular term of the contract, even if it is written there, it is not legalised. That is why this particular clause has come.

Sir, I see various suggestions by my friend, Shri Kamal Morarka for the purpose of enforcing it. As far as the two clauses are concerned which have been given, one is about how a particular provision will be enforced, whether the enforcing provision will reduce corruption or not, or help in eliminating corruptoin, or whether it will reduce corruption among the officials, among the middlemen, who are there, who are thriving in this country only by keeping an office. They simply keep an office and a telephone. They have liaison with all the officers and they are thriving and earning crores of rupees. Therefore, I would like to know from the hon. Minister whether this particular Act will be considered, whether this particular enforcement of the provision will be considered in the strict sense. Another aspect is about the continuing guarantee. There is a clause for continuing guarantee in sections 124 and 125. Even after the limitation period the continuing guarantee is enforced in our country. But in other countries there is a change of provision, there is a change of law and after the lapse of the interim period the continuing guarantee lapses. Wherther that provision also will be considered by the hon. Minister. And, thirdly, I want to make one suggestion to the Government. Whether it is the PWD or the electricity department, I have come across cases where in spite of the fact that they have all the paraphernalia and entire machinery, they give work to the contractors. Why should they go in for contracts when they have got their entire machinery for executing the work? It is because the officials there want to get money out of it and, therefore, they go in for contracts. In my opinion, Government should get all such work executed through its own machinery.

SHRI MOSTAFA BIN QUASEM (West Bengal): Hon. Vice-Chairman, to my understanding, there cannot be any general objection to the subject matter of the Bill which seeks to put a deterrent on a seller in appointing a middleman to obtain contract. But I have every doubt and I reiterate what my learned colleague, Mr. Kamal Morarka just now said, whether this amending piece of legislation will, in itself, be able to check the system of appointment by different firms in obtaining contracts. I think it may not be able to do away with this system or the practice of appointment of middlemen. However, I am not clear whether the stipulations in this amending Bill will be applicable only to domestic contracts or both domestic as well as foreign contracts. The hon. Minister would, I am sure, kindly take the trouble of clarifying the position.

Secondly, you may kindly look at the Statement of Objects and Reasons appended to the Bill wherein the hon. Minister has stated: "It is felt that in every Government contract.." and I would like to draw your attention to the stipulation "It is felt". May I know from the hon. Minister what actually prompted the Government to come forward with this piece of amending legislation? Why after a period of more than a century, the Government has come to feel that there should be such an amendment to the Indian Contract Act? Is it because that such cases are happening in good numbers recently—the cases of appointment of mid-

dlemen by firms in obtaining Government contracts? The hon. Minister should also clarify this position. What is the background of it which prompted them to come forward with this amending Bill?

Now, when this Bill comes to be a law of the country or when it is enacted as legislation, may I know from the hon. Minister whether the Government is ready to make use of this law to recover damages from certain firms which have violated the terms of the contracts entered into with the Government of India, particularly in the Defence sector? We discussed the Bofors affairs in this august House. I would like to remind you—you must be recollecting—that Mr. Arun Singh, the then Minister of State for Defence Production, in this august House, while taking part in a debate on Bofors affairs, categorically said that according to him, it has been proved beyond doubt that Bofors did pay some money in the name of winding up charges to a firm for obtaining the contract and that was in clear violation of the stipulations of the contract, and what is more, that was in clear violation of the undertaking given by Bofors to the Government of India. When this Bill comes to be enacted as law of the country, would the hon. Minister give us an assurance in this House that the Government is going to take the help of this law in order to recover damages from Bofors.... or from other companies which have paid commissions in violation of the terms of the contract entered into with the Government of India. I hope the hon. Minister would kindly take the trouble of dwelling on this point. With these words, I conclude. Sir, I am sorry I have not taken the entire seven minutes allotted to me.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Shri Bir Bhadra Pratap Singh. Seven minutes please.

SHRI BIR BHADRA PRATAP SINGH (Uttar Pradesh): Mr. Vice-Chairman, Sir, I am deeply obliged.

I quite agree that this is not a revolutionary piece of legislation But certainly, it is a progressive measure by which the situation can be contained or controlled. Whether one likes it or not, Government today is the biggest agency carrying on commercial activity. It is only those who have a feudal approach who are finding some difficulty in understanding this amending legislation. Mr. Morarka was saying that he was very sure about the role of middlemen and that he know who is doing what. I do not know why they should object when the Government has brought forward an amending legislation by which the role of middlemen would be restricted, restrained or discouraged. Hon. Members should remember that the law has to be within the four corners of the Indian Contract Act. We are not amending any other law. This Bill should be viewed from that point of view, with that spirit. If it aims at restricting restraining and discouraging middlemen, there should have been appreciation from the other side rather than criticism.

Sir, the Indian mind did not generally accept the contractual law. We did not accept it very willingly because it was a law foreign to us. We were a society, a country, based on sacraments. The three great philosophers of Western Europe, namely, Rousseau, Locke and Hobbs propounded the thesis of contractual law because they, in their society, found certain practical difficulties, as Mr. Morarka finds today in his own business dealings. Rousseau said that man was born free but everywhere he was in chains. The chain was not only the society, was not only the Kingship. The chain was the obligation society was putting on him. The social obligations and the contractual obligations were very much in his mind. Even Hobbs referred to the British Leviathan. The three propounded the theory of a society based on some form of contract. Leviathan was the obstruction to it. Therefore, no Leviathan, no section, should come in the way of a contractual society. We in India have accepted this. Because of the growth in the commercial activities and because of the Industrial Revolution which came in Europe first and then affected us rightly, we had to go in for this. Now Government is the biggest agency in regard to commercial activities.

I think the hon. Law Minister must have explained it. The law of damages has two

[Shri Bir Bhadra Pratap Singh]

initial difficulties. Liquidated damages was all right. But the whole thing arose when the concept of penal damages was given a very restricted meaning by the law courts in India. Section 73 provides for three things. Compensation for loss, compensation for damages and compensation for failure to discharge the obligations resembling those needed by contract. The third one was very very important and it was unfulfilled because courts in India took a very restricted view of the matter inasmuch as they did not award damages beyond what was needed and sometimes the damages became sham damages. The whole difficulty arose when there was the question of abjudicating upon these penalties. Therefore, I think with grace my friends on the opposition should accept this. State is the biggest contracting party, it is entering into all types of commercial activities. And you are demanding that the middleman should be discouraged, no commissions should be paid and if that is so, why are you not supporting the amendment which says that the penalty provision cannot be enforced for recovery of damages? There have been rulings of courts on the interpretation of this section that even where stipulated damaged is fixed in a contract which is not penal, the court will only award damages not exceeding the amount so stipulated. The amending provision at least has said that the amount can be double the amount stipulated. So, if you contract with the Government, you are liable to pay damage to the extent of double the amount. The Government is taking all the precautions by adding a proviso to section 74 so that the middleman is discouraged, they do not commissions. Earlier the plea taken by the courts was that if the damage is to the extent of Rs. 5000, the penalty would be Rs. 1000 only. But now after the enactment of this provision those who are contracting with the Government will be cautious, they will not be paying commissions to middlemen and all that. If you do not fulfil the contract or discharge your obligation, if the Government is not fully satisfied, the question of damages will come in. Provision for liquidated damage was already there but there was the difficulty about the penal damage. This Bill provides for that. So, I expected that the whole House would unanimously welcome this piece of legislation. As I said in the beginning, this is not a revolutionary piece of legislation but it is a progressive piece of legislation. The Government by this legislation wants to discourage middlemen, payment of commissions and all that. We should support this Bill unanimously.

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir, though this Indian Contract (Amendment), 1988, is a simple and welcome legislation, I would like to express my views regarding the procedure and the way in which legislation is brought in this House and the way in which it is being implemented. In the first instance, I would like to draw the attention of the hon. Law Minister that before framing any legislation we should give a serious thought to it. After the legislation is framed and the courts give interpretations in different ways, the Government comes forward with some amendments to the law. This should be avoided. Why should the court interpret every time in a different way? Before you bring forward a Bill, before you frame a legislation, you should be sure that it will not be interpreted in any other way than in the way you want. The Bill should be drafted in that way only. It has been our experience that every legislation that we have framed has been interpreted in a different way by the courts and we have brought new amendments.

Another important thing is that after passing the legislation, we have to put it into practice. It has not been implemented.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now it is the duty of the Government to see that it is implemented. It is their concern now.

SHRI B. SATYANARAYAN REDDY: Yes, Sir. I want that whatever legislation is passed by the Parliament, the highest legislative body of this country, the Government should see that it is strictly implemented.

Then I would like to draw attention to the fact that the present law is cumbersome and it should be simplified. Due to its combrousness, we are finding it difficult to dispose of cases. Thousands and thousands of cases are lying both in the High Courts and also in the Supreme Court and we are not in a position to dispose of these cases. I have been pleading for many years both inside the House and outside that the law is combersome and it should be simplified. I have given many examples how cases are pending for the last ten or twenty years and not getting disposed of. The law should be simplified and strictly implemented.

Our friend here has said that the present legislation discourages the appointment of middlemen and payment of commission etc. It is very good. But what is happening in practice? How are you going to strictly implement this legislation if you are not directly telling them that there should not be any middlemen, there should not be any commission paid? You are laying the penalty for contravening this. But you have to tell them directly that there is no room for appointment of any middlemen or payment of any commission. I do not know whether, as my friend has already said, it applies to domestic contracts or also to foreign contracts. We have been discussing in this House the Bofors contract which has played havoc not only in this country but in the whole of the world also. Attention has been drawn to the fact that commission has been paid and the country has lost Rs. 64 crores. I do not know how it will be recovered, whether this legislation will enable us to recover Rs. 64 crores from Bofors. In this house, the previous Minister, Mr. Arun Singh, has already stated that there is a breach of faith by the Bofors and Rs. 64 crores have to be recovered. The Law Minister should clarify whether this legislation will enable us to recover that amount. If it does so, then it should be recovered.

Lastly I would like to draw the attention of the Minister to the fact that the present amendment is in section 74. A proviso has been added to the existing section. This has been brought to discourage the appointment of middlemen and payment of commission. To that extent, it is a welcome legislation. I support it to that extent. At the same time I would like to draw the attention of the Minister that it should be strictly implemented. I have also asked a question whether it will be applicable to the foreign contracts also; and if so, whether Rs. 64 crores will be recovered from Bofors.

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): Mr. Vice-Chairman, Sir, I am afraid, not for a change but because of the merits of the case, I stand after a long time to oppose, and I oppose this Bill.

I do not find that the Statement of Objects and Reasons stipulates it, but it is felt that in every Government contract for the supply of any goods or for the rendering of any services, an undertaking shall be obtained from the seller to the effect that he shall not make payment of any fee, commission, perquisites or other consideration to any person in respect of the contract, over and above the payment of the price for the goods supplied or fees for the services rendered or any other payment permissible as provided for in the contract and that such undertaking shall form part of such contract.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Does it mean that if in the contract somethisg is provided for as commission, you will allow it?

SHRI HANS RAJ BHARDWAJ: I shall answer all those questions.

SHRI GHULAM RASOOL MATTO: I cannot understand, I cannot visualize, even in the wildest of my imagination, that any job or any contract can be done without anybody calling himself an agent or a supervisor without being paid any perquisite or any fee.

DR. G. VIJAYA MOHAN REDDY (Andhra Pradesh): Because it has become a way of life.

SHRI GHULAM RASOOL MATTO: I discuss it purely from the commercial point of view. In this context I will only quote a few examples from the Government.

Sir, the HMT is a very big organization of ours...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): It is not Government.

SHRI GHULAM RASOOL MATTO: But it is a public sector undertaking. I am talking of public sector undertakings. The HMT, for instance—I am assuming for the sake of argument—is manufacturing lakhs and lakhs of wrist watches and, for the purpose, it has to import some components. And somebody raised the question whether this applies to foreign dealers. Yes, it does, because even in the case of Bofors or any other Defence suppliers, the first clause that we put is that for purposes of determining whether the contract has been duly adhered to, the Indian Contrract Act will apply. So it is for both imports and exports, for both foreign and domestic firms. This is my understanding. If the Minister has to say something else, he may. But my understanding is that it applies to everybody.

Now I will give you the case of HMT. They have to import the components from Japan or some other place, and the firm supplying those components may have some agents over here, who are already here, and then they will have to tell them, "Please supply us these things." Now, how can you avoid that firm from paying commission to the agents?

I will give you another, very interesting, instance, and that is with regard to the National Textiles Corporation. The National Textiles Corporation has to import wool, acrylic fibre and acrylic filament Yarn. Their Japanese or Korean suppliers already have their agents to whom they pay a little commission, and their offices are established over here. Even there are channelizing agents in the case of all the metals and other items, the import of which is channelised and where the STC and MMTC are operating. How can you prevent payment of commission to the agents of those who supply all these things? How can you avoid it?

To my mind, this piece of legislation is not in consonance with the facts of the case on ground. I would request the honourable Minister to reconsider it. And there are only two ways left for him: One is, he should refer this Bill to a Joint Select Committee which should thoroughly consider it. Because this Bill has been introduced in the Rajya Sabha, still there is time for honourable Minister to constitute a Joint Select Committee which will go into the pros and cons.

I am quoting only these two instances. There are umpteen cases which can be quoted. Because of the existence of commission, we are seeing these things. The honourable Minister may have very good intentions. But we have had very bad experience about these Defence deals with commissions and commission agents. That has been our legacy for the past 40 or 50 years. But, while trying to avoid that, are you or are you not helping some people in the process?

The institution of commission agents cannot be avoided. But what will happen by this is, surreptitiously a person will deposit that amount in a Swiss bank or some other foreign bank and will not keep it here. If it is to be a clear-cut thing, why should it not be there 4.00 p.m. in the contract itself? Sir, a few years back, I am aware of it that when we were dealing with these defence contracts, we opened LCs for these defence contracts. In the LCs it was clearly stipulated that out of that 1 per cent would go to such and such person. So, we can openly accept a commission. So, there are only two ways now left. I can dilate on this because I have got a little insight into the working of the commercial fields. I would only request him because it has been introduced in Rayia Sabha and because this is a legislation being brought after 116 years. So, we should go into it thoroughly before enacting it. It will never be implemen-

ted, it will never be carried to the logical conclusion, and you will never win a case out of this. It is possible to my mind to consign this Bill to a Joint Select Committee. If it is not possible, don't make this compulsory. I do not know-he is a great lawyer himself-whether it will solves the problem if in clause 2 proviso instead of the words "shall preclude the Government" he uses the words "may preclude the Government" so that the option lies with the Government. Wherever in a contract the Government wants that this thing should not be there, they can do it, and wherever it is implicit, it is unavoidable, you cannot help it, you have got to pay it. To my mind, this piece of legislation will not be implemented it will create problems and problems. I would request the hon. Minister to consider this in this context which I have espoused and consign it to a Joint Select Committee or do something else.

With this, I conclude.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Ram Awadhesh Singh. Five minutes.

श्री राम अवधेश सिंह (बिहार) : उपसभाध्यक्ष महोदय, यह जो संशोधन बिल लाया गया है, पिछले समय में बोफर्स, सबमरीन डील में जो कमीशन के संबंध में सरकार को मुकाबला करना पड़ा है और कमीशन एजेन्टों के भीतरी कमीशन के कारण जो स्थिति पैदा हुई है उससे आहत होकर जल्दीबाजी में यह बिल लाया गया है। यह संशोधन का बिल जल्दी में लाया गया है। मैं नहीं समझता कि इस संशोधन के जरिये सरकार की जो मंशा है वह पूरी हो सकेगी क्योंकि इसमें बहुत से छेद हैं। इन छेदों से जो अनैतिक और गैर-कानूनी काम होते रहे हैं वे उनसे जारी रहेंगे। इस बिल के जरिये मैं यह कह सकता हूं कि यह कोशिश की गई है कि प्रोस्टिट्यूशन तो जारी रहें, लेकिन शादी न हो, इस तरह का काम यह बिल कर सकता है क्योंकि जिसको कमीशन लेना कहते हैं और जिसको इंटरनेशनल पैमाने पर किकबैक कहते हैं, लेकिन अपने देश में कमीशन या जिसको ब्राइबरी कहना तो अवांछित शब्द होगा, ये सब तरह की चीजें होती रहेंगी। इन सब को रोकने के लिए इसको थोड़ा टाइट करना होगा। टोटल डेमेंज के बारे में जो ओरिजिनल कानून में प्रावधान है उसमें ब्रिच आफ कंट्रेक्ट होने पर कम से कम जितनी राशि उसमें थी वह इंवोल्व थी और यह कहा गया था कि इतना डेमेज लिया जाएगा। इसमें कहा गया है कि यह दुगुना कर दिया जाय यानी दुगुने से अधिक नहीं, लेकिन दुगुना कर दिया जाय। लेकिन राशि के बढ़ाने-घटाने में इसमें जो लूपहोल्स हैं, जो प्रवृत्तियां काम लेनी वाली हैं, वे बंद नहीं हो सकती है। इसलिए मेरा सीधा सरकार से कहना है कि इसमें जल्दीबाजी मत करिये। आपके चेहरे पर बहुत कालिख पुत चुकी है कि आप देश के अन्दर और विदेश के अन्दर छिपे-छिपे पाप करते हैं। कि ये भारत के लोग छिप-छिप कर पाप करते हैं, खुल कर नहीं करते हैं। जैसा कि मैंने शुरू में कहा कि प्रास्टिट्यूशन तो शुरू करवा सकते हैं लेकिन शादी अलाऊ नहीं करवा सकते। इसलिये इस पर पूर्ण विचार हेतु इसको सलेक्ट कमेटी में भेज दीजिये और जो जरूरी संशोधन हों इसमें करवाकर फिर यहां लाइये। इससे आपका उद्देश्य पूरा होने वाला नहीं है। थोड़ा बहुत शब्दों में हेरफेर से डबल डैमेज करा दगे। इसलिये मैं कहना चाहता हूं कि इससे बात बनने वाली नहीं है। पहले राज्य सभा में पहले पहल यह बिल आया है। इसमें जल्बाजी क्या है ? हम समझ गये हैं कि इस बारे में आप सचेष्ट हैं। आप जल्द से जल्द इस संशोधन के जरिये, बोफोर्स में जो आपकी बदनामी हो चुकी है, जो आपके चेहरे पर कालिख पुत चुकी है, उसको धोना चाहते हैं। लेकिन इससे वह कालिख जल्द धुलने वाली नहीं हैं। इसलिये मैं चाहता हूं कि इस पर जरा ठंडे दिल से बिचार करिये और इसको सलेक्ट कमेटी में भेज दीजिये। धन्यवाद

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Minister, before you reply I also want that you should clarify two things about which I also feel myself. First I would like to know whether

[Shri Jagesh Desai]

this will also apply to industries run by the Government departments. Ordnance factory is also run by the Defence Department. Will that also be included in this? The public sector undertakings write in inverted commas that they are Government undertakings. I would like to know whether this will also be applicable to them or not. And if not, what is the rationale behind it? On that also you throw some light.

SHRI HANS RAJ BHARDWAJ: I will take this opportunity to thank all the Members who have contributed very valuable suggestions in this debate but I would first like to point out what is being added in the Contract Act.

Section 74, as it is, stands and a proviso is being inserted, which is the present amendment, which enables the Governmnet to recover double the amount which is involved as payment of fee or commission in violation of the stipulation in the contract. So, this is precisely the line which is being added. Here I would say what is the objection about this if you arm the Government to recover double damages when you find that your own contract or stipulation has been violated? And why it is necessary is because if you go in the original Section 74, the Government could recover only the amount equal to what is stipulated in the contract; or if it is not stipulated the Government could not recover uniess you show so much loss has been caused.There is no question of damages being recovered under Section 74. You could noly recover the amount specified in the contract. We are not today debating the efficacy of the agentship or commission agent or the person in the so-called trade of commission agents. I am not discussing that.

श्री राम अवधेश सिंह : वह तो आयेगा, इसमें आ जायेगा ।

श्री हंस राज भारद्वाज : दो मिनट जरा मैं . . . (व्यवधान)

उपसभाध्यक्ष (श्री जगेश देसाई) आप बैठिये ।

SHRI HANS RAJ BHARDWAJ: I am only submitting that before us today is one line of amendment which empowers the Government to recover double the amount, which is involved in the violations. If money has been paid, whether it is Rs. 20 crores or Rs. 40 crores, to one commission agent, the Government will be entitled to recover double that amount from the person who has violated and the party to the contract...

SHRI GHULAM RASOOL MATTO: Excuse me. So far so good, but kindly read paragraph No. 1 of the Statement of objects and Reasons.

SHRI HANS RAJ BHARDWAJ: Kindly allow me to say. If you read something beyond this that means I am clarifying it. You kindly read section 2 of the new Amendment Bill. In Section 74 of the Indian Contract Act, 1872 before the first Explanation, "the following proviso shall be inserted namely" and then the proviso is given. I don't find anything else to be added in Section 74. Why it is necessary? It is necessary because under the provisions of the existing section 74 if somebody violates a contract and you go to the court and you claim double amount or treble amount or more than what is the stipulated amount the courts do not grant it. They will say, you are bound by the precise terms of the contract. So that is the difficulty. To remove that difficulty this proviso has been added so that in case you want to recover something from the party which has violated the contract causing embarassment or whatever it is to the Government, the Government can catch hold of that. Here is a term in the contract itself which enables us to recover more than what is stipulated in existing section 74. If you don't have this proviso today, then, you cannot talk of recovering as damages from the party. This is the limited scope of this amendment. As I said earlier, I would not enter into that argument on merits whether you can trade in the international world without the institution of the agency or even you can trade in the country without the institution. You see the farmer goes to the marketing committee and

offers his produce to that marketing agency and he sells the goods and recovers the money and gives a commission. I sold my own sarso and all these things last year and I had to pay Rs. 300 to that agent. I don't have to bother. He accepted my goods and sold it to the customer. I do not know who he was and he sent me a cheque to my house. I welcomed it. Sometimes it is useful. But we are living in a hypocritic society. I would like to be very frank. Today, if you pay the commission, then, you say "you are committing corruption." If you don't pay the commission, you cannot say. There things are prevalent in our way of life which I personally call something like a hypocrisy. Let us decide in this House or that House what types of trade do we have.

श्री राम अवधेश सिंह : आप तो हिपोक्रेसी को इनकरेज कर रहे हैं । (व्यवधान)

श्री हंसराज भारद्वाज : राम अवधेश जी मैंने जिन्दगी में इतनी हिपोक्रेसी कभी नहीं देखी जितनी आपके अन्दर देखी है । आप मुझे न कहिये, सुनिये । हिन्दी पर वाक आउट करते हैं और बाद में आकर अंग्रेजी में बोलते हैं । मैं तो सच्ची बात कहता हूं कि तमाम देश अगर यह चाहता है कि एजेंसी हो तो एजेंसी रख लो मैं तो दुनिया में घूमा हूं । मैं चेम्बर्स आफ कामर्स में भी बैठा हूं । सब से डवलप्ड कंट्रीज और सोशयटीज में मैंने आज तक यह देखा है कि एजेंसी को कोई कंट्री अवायड नहीं कर पाया है । लेकिन यहां पर क्योंकि शोर हो रहा है कि कमीशन क्यों दिया, यह क्यों दिया, यह हमारे मुल्क में हमारी डेमोक्रेसी में लोगों को बर्दाश्त नहीं है कि हमारा एक पैसा भी फिजूल जाए इसलिए लोग कहते हैं कि हमारे मुल्क के एक एक पैसे का सही इस्तेमाल हो । इसलिए गवर्नमेंट ने कहा है इस इंस्टीट्यूशन को निकाल दो । तो यह कमीशन एजेंट क्योंकि बिचौलिये का काम है हमारे यहां हमारी सोसायटी को यह एक्सेप्टेबल नहीं है इसलिए गवर्नमेंट ने कहा कि गवर्नमेंट कन्ट्रेक्ट्स पर चाहे वह यहां के हों या बाहर के देशों के साथ हो हम बिचौलियों के साथ काम नहीं करेंगे गवर्नमेंट टू गवर्नमेंट, पार्टी टू पार्टी करें । अगर कोई पार्टी इसकी अवहेलना करेगी तो उससे हम जितना पैसा वह देगा दुगुना वसूल कर लेंगे । इसमें मेरे ख्याल में कोई बुराई नहीं है । यह सब पर लागू होता है तमाम गवर्नमेंट... (व्यवधान) **श्री राम अवधेश सिंह** : आपको पता कैसे चलेगा ? (व्यवधान)

श्री हंसराज भारद्वाज : हमने एक कंट्रेक्ट कर लिया उसमें एक क्लाज डाल दिया । गवर्नमेंट के कन्ट्रेक्ट में कोई भी मिडलमैन, कोई भी एजेंट, आप कुछ नहीं रख पाएंगे । आप सीधे उतना पैसा देंगे तो उसके बाद भी अगर कोई करता है तो हमारा यह कानूनी अधिकार बन जाता है कि आप उसकी रिकवरी कर लें । मैं यह हिन्दी में इसलिए बोल रहा हूं ताकि आपकी समझ में आ जाए । उसके बाद व्यापारिक दुनियां में से अर्ज कर दूं मैंने यह खुद देखा है कि जहां पर आरबिट्रेशन के लाज मजबूत है जहां पर पार्टी मन से आरबिट्रेशन में जाना चाहती है और उनको फालो करते हैं वहां कोई प्रोब्लम नहीं है लेकिन हमारे देश में आरबिट्रेशन में जा कर भी अवार्ड होने के बावजूद भी सीधे कोर्ट में ले जाते हैं और यह देखा गया है आरबिट्रेशन ने बहुत बढ़िया अवार्ड दिया सोच समझ कर अवार्ड दिया अवार्ड देने वाला बहुत ऊंचे पद पर रहा है जज रहा है और पब्लिक लाइफ में रहा है उसके बावजूद भी पार्टीज बिलकुल हेजीटेट नहीं करती । Arbitrator has misconducted himself. यहां तक इल्जाम लगा देते हैं क्योंकि उनको सूट करता है । आरबिट्रेशन में निर्णय खिलाफ जाने के बाद पैसा वे देना नहीं चाहते हैं... (व्यवधान) जाना ही नहीं चाहिए अगर आप आरबिट्रेशन की भावना में विश्वास रखते हैं । इंटरनेशनल दुनिया में आज अवाइड करके आप व्यापार करना

[श्री हंसराज भारद्वाज]

चाहेंगे तो नहीं कर सकते हैं । आज इंटरनेशनल आरबिट्रेशन में करोड़ों रुपये के फैसले--पैरिस और जेनेवा में जाकर देखिए--किस प्रकार से मान्य हो जाते हैं । अगर दोनों आदमी, दोनों पार्टी आरबिट्रेशन को सपोर्ट करती हैं तो जाहिर है कि वे चाहते हैं कि हमें कोर्ट में नहीं जाना है । अगर कोर्ट में जाना है तो आरबिट्रेशन में क्यों जाते हैं । आरबिट्रेशन की स्प्रिट ही यही है टु एवाइड लिटीगेशन । लेकिन हमारे मुल्क में आरबिट्रेशन को लोग नहीं मानते हैं क्योंकि हमारी सोसाइटी में इन चीजों के जो मूलभूत सिद्धांत हैं उनमें विश्वास नहीं है । प्रोनोट लिखकर दे देते हैं लोग उसके बाद जिसको पैसा देना होता हैं तो वकील को कह देते हैं कि मैं तो अपने सिग्नेचर ही डिनाई करता हूं । यह हमने प्रेक्टिकल रूप में देखा है । हजारों रुपये लेते वक्त प्रोनोट मे अंगूठा लगा देते हैं प्रोनोट लिखकर देते हैं लेकिन जब वह पैसा वापस मांगेगा तो कहेंगे मेरे दस्तखत ही नहीं हैं । उसके ऊपर केस चलता है और लटकता रहता हैं । ये सब चीजें ऐसे समाज में मुश्किल हैं जहां पर धारणाएं अलग अलग हों, विचार अलग अलग हों । व्यापारिक वर्ग में मैं समझता हूं कि कंट्रेक्ट की.....

obligations of contract are very important. If you do not stand by your contract, your obligations you will have no mraket for yourself. We must accept those basic norms. That is why if you do not stipulate in the contract itself that you are entitled to recover so much in excess of what is provided in section 74, the court will not entertain you because of the rulings one after the other which say that you cannot go beyond what is stipulated in the contract. To enable that, this little proviso is added. How much efficacious or useful it will be is a question which the future will answer. But it is very good to make this exercise because we are all agreeing on one point that we should have no middleman, we should have no commission agent. If you say, "No. We are happy with middlemen, we will have them", then there is no controversy. As Kamal Morarkaji rightly said, if the middleman is to be eliminated, let us make a beginning. Or if you want to keep him, then let us have a stipulation that in our country we will be able to pay only three per cent or four per cent as commission to facilitate quick transactions. But that is not happeing. It is not acceptable to us. I know personally that it may not be acceptable. People will say, "Why three per cent? Suppose there is a contract worth Rs. 1000 crores. Three per cent of that will be Rs. 30 crores. Why should Rs. 30 crores go to that person?" It is better at the moment to try that middlemen are avoided as far as possible. In all Government cases, we have stipulated, we have issued directions, that nobody should involve middlemen and if anybody does it, we will be able to recover so much from him. So, this is the limited scope of this amendment. And I think that all those factors which have been mentioned are just political in nature and I will not enter into them.

I have been very much impressed by the points raised by Mr. Kamal Morarka. I think it is not for me to reply to him now about the decentralisation of justice about the eliminating of arrears, etc. These are issues on which we will debate after the judges are appointed. As I said whatever efforts we have made are commendable. Very recently we started the institution of 'Lok Adalat'. We have been able to sort out eighteen lakh cases out of court. The institution is merely on an experimental basis. But you must appreciate those people who have agreed to settle their cases outside the court because our people are not willing to settle their cases outside the court. Go to the American society. There, 70 to 80 per cent cases are settled outside the court because if they feel that the charge is valid, they accept it and get a deferred sentence.

SHRI SUBRAMANIAN SWAMY: So there is something which you like about America.

SHRI HANS RAJ BHARDWAJ: Our minds are very open.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You need not hear them.

SHRI HANS RAJ BHARDWAJ: I would like to answer. It is better to go to Boston via Moscow so that you get both the experiences. As a lawyer I can tell you we have taken from the American Bill of Rights for our Constitution. There is no bar and we have always grasped good things from others and given our good things to others. However, I submit that this is not the opportunity to discuss that topic. But I will be very happy to discuss it because this House is constituted of most experienced parliamentarians, lawyers and jurists. So any suggestion from them would be welcomed. Ours is a very large country with a large network of courts, with a network of laws. Everyday we are legislating new laws. Our trade and commerce has increased manifold and our ambitions and our ommitments to certain values and human rights are increasing day by day. More and more we may have to go to court. That is not something bad. But we must try to find a mechanism of solving our cases early. That is our priority. I can assure Mr. Morarka, I would like to have any discussion with him as to how much more we can decentralise than we have done. We have service tribunals, tax tribunals. We are going to have revenue tribunals. We are going to have separate railway tribunals. It is such a big country with so many problems that it will take a little time to switch over to a very efficacious system from the Anglo-Saxon pattern.

Mr. Vice-Chairman, I do not want to take more time of the House. I would only urge that this is a limited measures to strengthen the hands of the Government to recover damages in terms of Section 74 which we cannot do now in view of the difficulties arising out of court rulings. With these words I commend that the House may kindly pass this Bill.

श्री राम अवधेश सिंह : मान्यवर, मैं एक स्पष्टीकरण चाहता हूं । इस पर मुझको कोई विवाद नहीं है--आप डेमेजेज लीजिए, दुगना लीजिए, तिगुना करिये, चौगुना करिए, उसमें कोई आपत्ति नहीं है, लेकिन जो संदेह हैं, उसको जरा स्पष्ट करिए कि जो कमीशन लेगा या देगा, तो उसको आप कैसे जानेंगे कि कितना कमीशन दिया और उस कमीशन से दुगना आप उससे डेमेज लेंगे ? कमीशन तो वह अंडरहैंड देगा, वह कहीं लिखित नहीं देगा, तो ऐसी स्थिति में आप कैसे जान पायेंगे कि कितना कमीशन दिया गया और कितना डेमेज आप उससे लेंगे ?

श्री हंसराज भारद्वाज : हमारे देश में आप जैसे खोजी पुरुष भी हैं और प्रेस भी है, आप बतायें । उस पर एक्शन होगा । आप अपनी सारी व्यवस्था पर भरोसा रखिये ।

श्री राम अवधेश सिंह : इसमें से एक बात और निकलती है कि कंट्रेक्ट करके और किसी कंट्रेक्टर ह्रास करना होगा तो आप झूठे भी कह देंगे कि तुमने कमीशन दिया है ।... (**व्यवधान**)

श्री हंसराज भारद्वाज : अब यह कंट्रेक्टर के हमदर्द हो गये, मैं क्या करूं ।

श्री राम अवधेश सिंह : आप कमीशन का पता लगाने की कोई मशीनरी करिए और उस पर चौगुना लगाइये हम उसकी ताईद करेंगे, प्रशंसा करेंगे ।

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): By this Bill actually Government's burden has increased.

DR. G. VIJAYA MOHAN REDDY: A specific point was raised whether this will cover foreign contracts.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): All contracts. Now I put the motion to vote.

The question is—

"That the Bill further to amend the Indian Contracts Act, 1872, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now we take up the clause-by-clause consideration of the Bill.

Clause 2 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI HANS RAJ BHARDWAJ: Sir, I move—

"That the Bill be passed."

The question was proposed.

श्री सत्य प्रकाश मालवीय : यह इंडियन कंट्रेक्ट एक्ट, 1872 में पारित हुआ है और 116 वर्ष बाद उसमें इस संबंध में जो धारा 74 है, उसके परंतुक में कुछ संशोधन करने की आवश्यकता पड़ी और जो उद्देश्य और कारण हैं, उनमें यह बतलाया गया है कि न्यायालयों के कुछ निर्णय हैं, इसलिए भी संशोधन करने की आवश्यकता पड़ी ।

तो मैं यह जानना चाहता हूं कि बहुत से आब्जेक्ट्स एंड रीज़न्स में बताया भी जाता है—एक तो न्यायालय से स्पष्ट नहीं है कि किस न्यायालय का निर्णय है । तो मैं जानना चाहूंगा कि सुप्रीम कोर्ट के किसी केस का निर्णय है या हाई कोर्ट का निर्णय है, इसका आप स्पष्टीकरण करेंगे ?

दूसरे इसमें यह जो विधेयक है यह 29 फरवरी 1988 को इस सदन में पुरःस्थापित किया गया था और आज करीब-करीब 10 महीने हो रहे हैं । तो इसका मतलब यह है कि सरकार इसके लिए बहुत ज्यादा, सीरियस नहीं थी, बहुत ज्यादा गंभीर नहीं थी क्योंकि पुरःस्थापित करने के बाद 10 महीने बीत गए और दस महीने बाद आज यहां इस पर चर्चा शुरू हुई है । जो गुलाम रसूल मट्टू साहब ने सुझाव दिया है कि इसको सलेक्ट कमेटी के पास भेजा जाए, लेकिन यह जो कंट्रैक्ट के प्रोविज़न्ज़ हैं इनको एनफोर्स करने के लिए जो कंट्रैक्ट होगा बहुत से पब्लिक लोगों को होगा, तो मेरा यह सुझाव है कि मंत्री जी इस पर विचार कर लें कि जनता के साथ परिचालित करने के लिए इस विधेयक को भेजा जाए ।

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): No, please.

SHRI GHULAM RASOOL MATTO: Sir, I have a right and I cannot forgo my right.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): For that you have to give your name and you have not given.

SHRI GHULAM RASOOL MATTO: Sir, I will not speak more than a sentence.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You have already spoken on the Bill. Secondly, you have to give your name in advance, but you have not given. But Mr. Malaviya had given and so, I had allowed him.

SHRI GHULAM RASOOL MATTO: Sir, I want to go on record that this is an advice from a friend—I do not belong to the Opposition—that this piece of legislation is completely impracticable and the Governmment should reconsider it.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You have already said that.

श्री हंसराज भारद्वाज : सर, मालवीय जी ने जो बात कही है कि 116 साल के बाद इसका यह अमेंडमेंट आया है यह बात गलत है क्योंकि इसमें पहले भी 74 को 1899 में एड किया गया था और इसमें जो आज परिवर्तन हुआ है वह एक मामूली सैद्धांतिक परिवर्तन यह है कि आप पहले डैमेजज़ नहीं ले सकते थे और अब डैमेजज़ लेंगे । साथ ही जो आपने रूलिंग कही, वह हाई कोर्ट्स की भी और सुप्रीम कोर्ट की रूलिंग है कि जो आपके कंट्रैक्ट में एक-दूसरे से एग्रो कर लिया आप उस से ज्यादा कैसे मांग सकते हैं । तो उस को अगर आप उस एक्ट में प्रोवाइड कर देंगे तो आप उस धारा के अनुसार ले सकते हैं दूसरी पार्टी से क्योंकि यह 74 में प्रोवाइडिड है इसलिए हम ले सकते हैं और कोर्ट दे या नहीं दे, वह दूसरी बात है ।

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now, I will put the motion to vote.

The question is:

"That the Bill be passed."

The motion was adopted.

DELHI PROHIBITION OF EVE-TEASING BILL, 1984

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI SANTOSH MOHAN DEV): Sir, I beg to move:

"That the Bill to prohibit eve-teasing in the Union territory of Delhi and to provide for matters connected therewith, be taken into consideration."

Sir, I rise before this House today to request for consideration and passing of the Delhi Prohibition of Eve-teasing Bill, 1984.

Sir, a copy of the Bill along with the Statement of Objects and Reasons is before the honourable Members. As has been mentioned in the Statement of Objects and Reasons, in recent years there has been a perceptible increase in the complaints of eve-teasing in Delhi, especially in buses and other public places. The tendency of eve-teasing is an unfortunate aberration in the society where for centuries women have enjoyed not only an important, but also a respectable status. The present unfortunate trend of subjecting women to humiliation and degradation by the eve-teasers is not conducive to the health of our great society and it has, therefore, been considered expedient in the public interest to devise special legislative measures to tackle the problem more effectively.

The existing provisions of the Delhi Police Act and the Indian Penal Code have not proved effective and adequate. The Delhi Police Act, for example, provides for a fine of up to Rs. 100 for the offence and I am sure that the honourable Members will agree with me that this punishment is not deterrent enough. It is a matter of well-recognised public policy that whenever a social and economic offence assumes serious proportions, then special legislative measures with deterrent provisions and quicker court procedures should be enacted even if there are general provisions of law in existence. It is in this context that the Delhi Administration had forwarded the Delhi Prohibition of Eve-teasing Bill, 1984 as passed by the Metropolitan Council with the request that the same may be enacted by Parliament.

Sir, the Bill as proposed by the Delhi Administration provides that whosoever commits the offence of eve-teasing shall be punished with imprisonment which shall not be for less than seven days and which may be extended up to 15 days for the first offence and shall also be liable to fine.

The Bill provides that the offence is cognizable and non-bailable. All offences under this Bill shall be treated by a summary procedure by Metropolitan Magistrates in the interest of speedy justice. Let us remember that once the Bill becomes law, not only will those guilty of the offence be suitably punished but the fear of speedy justice would have a deterrent effect on the potential eve-teasers.

I commend this Bill for adoption by this August House.

The question was proposed.

SHRI SUBRAMANIAN SWAMY (Uttar Pradesh): Sir, this Bill was introduced in Parliament on the 23rd August 1984. The Minister read out the Statement of Objects and Reason which obtained at that time. The situation has got much worse but the Minister has failed to explain why the Government has taken such a serious matter so casually that it took them more than four years to take this Bill up for consideration.